



DEPARTMENT OF STATE

Washington, D.C. 20520

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Senior Interagency Group No. 32

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CIA - [redacted]
Commerce - Mrs. Helen Robbins
Defense - COL John Stanford
Energy - Mr. William Vitale
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Treasury - Mr. David Pickford
UNA - Amb. Harvey Feldman

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SUBJECT: Proposed Presidential Proclamation on Exclusive Economic Zone (EEZ) and Accompanying Oceans Policy Statement; Request for Agency Approvals Thereof

Attached for final interagency review and clearance are:

- (a) A Presidential decision memorandum on the EEZ;
- (b) a draft Presidential Oceans Policy Statement;
- (c) a draft Presidential Proclamation of a US Exclusive Economic Zone.

Addressees are requested to telephone their clearance of these papers to Mr. Brian Hoyle, 632-9098 by 3:00 p.m. Tuesday, 11 January 1983. If necessary there will be a meeting of the Law of the Sea and Oceans Policy SIG on January 13 at 10:00 a.m. in Room 7219, U. S. Department of State.

L. Paul Bremer, III
Executive Secretary

Attachments:
As stated.

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Jan. 5, 1983

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SUBJECT: Oceans Policy and Law of the Sea--Establishment of an Exclusive Economic Zone for the United States by Presidential Proclamation and Promulgation of a US Oceans Policy

ISSUE FOR DECISION: Whether the United States should establish an Exclusive Economic Zone (EEZ) by Presidential Proclamation and promulgate a US Oceans Policy Statement.

ESSENTIAL FACTORS: By NSDD-58 (Tab A) the Senior Interagency Group for Oceans Policy and Law of the Sea was charged with preparing recommendations on oceans policy including giving prompt attention to the establishment of an EEZ for the United States.

An EEZ is an area beyond and adjacent to the territorial sea, over which the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the seabed and subsoil and superjacent waters, and with regard to other activities related to the economic exploration and exploitation of the zone. The zone extends from the outer limits of the territorial sea to a line, in most cases, 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

The United States already has fishery resource jurisdiction (with the exception of highly migratory species of tuna) extending to 200 nautical miles from the coast (under the

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Magnuson Fishery Conservation and Management Act), sovereign rights for the purpose of exploration and exploitation of the resources of the continental shelf (implemented through the Outer Continental Shelf Lands Act), and certain jurisdiction beyond the territorial sea relating to pollution control (under the Clean Water Act of 1977 and other laws).

The establishment of an EEZ would provide new United States jurisdiction over: a) mineral resources of the ocean floor beyond the continental shelf out to 200 nautical miles (including the opportunity to extend US tax jurisdiction to such mineral resources); b) other economic activities, such as the production of energy from the winds, waves, tides and thermal conditions, within the EEZ; c) all artificial islands, and installations and structures used for economic purposes (to the extent not yet established); and d) creates a framework wherein jurisdiction over marine pollution and marine scientific research could be exercised or expanded, as appropriate, by legislation. The EEZ would apply to the waters adjacent to the United States, US overseas possessions, and the Commonwealth of Puerto Rico.

Proclamation of an EEZ at this time would create a valuable precedent to help guide the practice of other coastal States when they establish their EEZ's and would bring within the jurisdiction and control of the United States additional

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resources within 200 nautical miles of our coasts. It would be seen by the public and many members of Congress as a commitment by the President to protect and promote US interests.

The perceived disadvantages of a US proclamation at this time are: that it could accelerate the disposition of a number of coastal States to adopt EEZ's claiming jurisdiction and control in excess of that permitted under international law as reflected in the Law of the Sea Convention and, therefore, contrary to US interests; it would reinforce the argument that the US is picking and choosing among those rights and duties that it will respect, and it would be viewed by some in the Congress as an act that would impair rather than promote US interests in attracting challenges to our exercise of our oceans rights. These arguments are not persuasive, for reasons set out below.

This paper reflects the considerations of the Senior Interagency Group. The Senior Interagency Group recommends that an EEZ be established by Presidential Proclamation and that supplemental legislative and regulatory initiatives be undertaken by the Administration in this connection. A proposed Presidential Proclamation is attached at Tab B and a Presidential Statement on Oceans Policy at Tab C.

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BACKGROUND1. Purpose

The purpose of establishing an EEZ is to assert our rights and interests in a manner which will guide the development of international oceans law and bring within our jurisdiction resources which are rightfully ours consistent with such law. If this is carefully done so that the rights and jurisdiction asserted by the US are within the parameters of the international law of the EEZ as reflected in the LOS Convention and take into consideration the concerns of our allies and other key States, we have the opportunity to encourage the practice of other States along similar lines and thereby to see customary international law develop in a manner acceptable to us.

2. The Evolution of the Exclusive Economic Zone

The EEZ evolved during the Third United Nations Conference on the Law of the Sea (UNCLOS III) as a compromise between those States oriented toward the establishment of jurisdiction and sovereign rights over marine areas off their coasts (including Latin American claimants of 200 nautical mile territorial seas) and those States more oriented toward the maintenance of traditional freedoms of the seas beyond a narrow territorial sea. The essential compromise worked out in the UNCLOS III Convention is that, in an exclusive economic

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zone extending 200 nautical miles from the coast, the coastal State is entitled to exercise jurisdiction over the conservation and management of the living and non-living resources of the area; in return, all other high seas freedoms, such as freedoms of navigation and overflight and related uses of the zone remain intact.

The UNCLOS III Convention elaborates the resource related jurisdiction, the pollution jurisdiction, and the marine scientific research jurisdiction that may be exercised; it does not, unfortunately, elaborate as clearly the juxtaposition of these concepts to the freedoms of navigation and overflight and other related uses in the zone. Thus, the UNCLOS III Convention leaves somewhat ambiguous the precise jurisdictional parameters of the EEZ. Over 50 States have already made EEZ claims and many more are likely to do so in the interim between opening the UNCLOS III Convention for signature and its eventual entry into force, if that ever occurs. Some of these claims are consistent with the Convention, others are not. Accordingly, State practice, both within and outside of the Convention, will help to define the content of the EEZ in international law.

The application of appropriate policies in a US EEZ would create a valuable precedent with respect to the shaping of the EEZ as a feature of international law. The EEZ the

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US creates should be consistent with the UNCLOS III principles which, on balance, reflect US interests. Deviation from these principles, especially if the US were to claim more extensive jurisdiction than permitted by the Convention, could provoke others to do so with potentially adverse effects on our commercial and military navigation interests. The SIG does not propose such a claim.

3. The Legal Basis for the Establishment of an Economic Zone

While the text of the UNCLOS III Convention provides for the establishment of an EEZ, it is also clear that the EEZ is widely regarded as a claim of jurisdiction whose lawfulness is not dependent upon the Convention's entry into force or a claimant's becoming a party to the Convention. There is a record of State practice in support of such zones, generally consistent with, but not dependent upon the UNCLOS III Convention. The States that have declared exclusive economic zones include some US allies (France, New Zealand, Norway, Spain, and Iceland). The International Court of Justice stated in the Tunisia-Libya Continental Shelf Case that "the concept of the exclusive economic zone...may be regarded as part of modern international law". (ICJ Reports 1982, para. 100.) The American Law Institute also has (preliminarily) indicated that it believes that the EEZ is part of customary international law. Accordingly, a US claim of an EEZ would have a

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substantial basis in customary international law and its lawfulness would not be subject to serious or sustained challenge by other States. At the same time, we must recognize that if we make such a claim, we are in no position to deny the rights of other States to make similar claims. Indeed, it appears useful to stimulate claims conforming to our own.

4. International Legal Implications of Establishing an EEZ

Under the LOS Convention, the EEZ is a specific legal regime with detailed, but also ambiguous, parameters. The jurisdictional content of the EEZ as a matter of customary international law has not crystallized. Some States have claimed more control over activities in their EEZ's than they could exercise under the UNCLOS III Convention; e.g., control over military exercises; the laws of other States do not claim as much; and others simply have not specified the rights they claim.

If we follow the UNCLOS III principles, we would enhance our position that other claims cannot be inconsistent with our interpretation of the model.

We must also recognize that the legal basis for establishing an economic zone cannot persuasively be distinguished from the legal basis supporting any jurisdictional claim made by a coastal State that is consistent with the LOS Convention.

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Whether or not the US claims an EEZ, we will not be able to argue credibly that a coastal State has no basis in international law for establishing a 12-mile territorial seas which affords to all States the navigational rights and freedoms specified in the Convention. However, the legal basis of the traditional 3-mile position will be maintained in all specific instances until the coastal State in question demonstrates respect for our rights and freedoms.

BENEFITS TO THE UNITED STATES OF AN EEZ CLAIM

There are two major areas of benefit for the US in the establishment of an EEZ. One is the actual resource jurisdiction that would be encompassed. The other is, the valuable precedential effect that could be created with respect to the shaping the content of the EEZ as a feature of international law.

The establishment of an EEZ would not materially affect present US fisheries and continental shelf jurisdiction, which is complete as a matter of international law. However, it would bring within the control of the United States additional economic resource uses of the oceans within 200 nautical miles of the United States' coast. It would somewhat strengthen our fisheries negotiating leverage. It would clearly establish US jurisdiction and control over the minerals of the seabed beyond the continental shelf out to 200 nautical miles, including polymetallic sulphides and cobalt/manganese

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crusts which may be of substantial commercial value in the future, and energy related uses from winds, tides, waves and thermal energy conversion.

Under the UNCLOS EEZ concept, the coastal State may establish significant jurisdiction over pollution and marine scientific research in the EEZ. In the Convention, the scope of coastal State control over marine scientific research is extremely broad, and over pollution somewhat less so. Nevertheless, the SIG has reviewed US marine science and pollution control interests and determined that the US does not at this time have a coastal interest in augmenting its present pollution jurisdiction or asserting marine scientific research jurisdiction. However, the US does have a strong interest in preventing coastal States from using marine scientific research or, more likely, pollution jurisdiction, to restrict the exercise of those traditional high seas freedoms that the UNCLOS Convention, as we interpret it, reserves for all States in the EEZ. It is in this area that the US can set an example that would guide State practice towards acceptance of an EEZ regime whose pollution and marine scientific research elements do not restrict the exercise of these freedoms, but do protect legitimate coastal State interests.

An EEZ proclamation would be seen by the public as a commitment by the President to protect and promote US interests

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in the development and conservation of resources to which the US is entitled under international law.

The EEZ proclamation should be viewed by some in the Congress as a positive effort by the President to promote US interests. Senator Ted Stevens (R-Alaska) and Congressman John Breaux (D-LA) have introduced bills to establish an EEZ. A recent letter to President Reagan from Breaux and nineteen other Congressmen has urged prompt establishment of an EEZ. While these proposals will require changes before enactment, they could form the basis of legislative implementation of the EEZ proclamation, as the OCS Lands Act of 1953 did for the Truman Proclamation of 1945. Senators Percy and Pell have written you indicating their concern on this issue. Chairman Zablocki on behalf of himself and 57 other Congressmen (most of whom are on record as critics of the President's LOS policy) have expressed concern about the consequences of a unilaterally declared US EEZ; and whether it is appropriate to move forward at present with such a proposition.

US proclamation of the EEZ along the lines of the UN LOS Convention will reassure countries with important LOS concerns that the US will accept the coastal jurisdictional provisions contained in the LOS Convention. Many nations fear that the US, by removing itself from the UN LOS treaty process, will reject jurisdictional claims reflected in the UNCLOS III

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Convention and growing State practice. Declaration of an EEZ in conjunction with a comprehensive oceans policy should reassure the international community and restore our leadership in the development of international oceans law. It may also show some States that they need not become party to the LOS Convention to enjoy rights under the international law of the sea. By shaping the content of our EEZ to permit maximum freedom of the high seas consistent with US resource jurisdiction, and in particular in the area of pollution, we may influence the implementation of the EEZ concept by other States and thus retard further erosion of the freedoms of the seas in the 200-mile zones.

POTENTIAL DISADVANTAGES OF AN EEZ CLAIM BY THE UNITED STATES

A number of potential disadvantages exist to establishing an EEZ at this time. At a time when the US is under attack by a number of countries for not signing the LOS Convention, US declaration of an EEZ could hasten the adoption by other countries of EEZ's that claim greater jurisdiction than permissible under the US interpretation of the Convention. Such excessive claims would be contrary to US interests and could encourage challenges to US uses of the oceans. Establishment of an EEZ at this time could reinforce the arguments of domestic and foreign critics of the Administration that the US is picking and choosing from a package deal, trying

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to reap the benefits while rejecting the burdens of the LOS Convention. Establishment of an EEZ now will be seen by many Congressional critics of the Administration's LOS policy as encouraging US isolation from its responsibilities as a member of the international community.

An EEZ claim by the United States means that we must accept comparable claims of other States. Thus, we would have to concede resource jurisdiction off foreign coasts out to 200 nautical miles (except for jurisdiction over highly migratory species of tuna). Although this means giving up a right to exploit seabed resources beyond the continental shelf but within 200 nautical miles of a foreign coast, it is most unlikely, in light of the clear trend in the law, that US companies would spend the money to exploit resources in such areas even if the US maintained its current position. Second, an EEZ claim concedes the right of the coastal State to impose reasonable controls on marine scientific research off its coast, unless such control is specifically disclaimed in an EEZ assertion. This will require closer cooperation with other States to allow research programs to continue. Whether or not we assert an EEZ, military research and other activities related to the freedom of the high seas (and not subject to coastal State jurisdiction) may be questioned by other nations. We must be firm in exercising our rights in

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the face of such challenges. Third, the declaration of an EEZ could hasten claims of other States to expansive pollution jurisdiction.

However, these claims either exist or are expected to arise regardless of whether we act; therefore, we can better influence these claims by acting affirmatively and exercising some leadership in this area.

THE PRESIDENT'S AUTHORITY AND OTHER DOMESTIC LEGAL CONSIDERATIONS

The precedent of the US claim to the Outer Continental Shelf supports the view that the President can establish an EEZ by proclamation, rather than by legislation. In 1945, President Truman proclaimed jurisdiction and control over the continental shelf, but it was not until 1953 that legislation was passed to provide a framework for the regulation of activities on the shelf.

In balancing the President's inherent foreign affairs powers against the powers of the Congress to regulate interstate commerce under Article 1, section 8 of the Constitution, the best conclusion, although by no means the only defensible one, seems to be that the President could proclaim US sovereign rights or control over the resources of an EEZ, but that only Congress may establish a regulatory framework for the exploitation of resources, for the protection of the marine environment, and for the conduct of marine scientific research.

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This conclusion is reinforced by the record of legislative action in several relevant areas, such as fisheries, the continental shelf, ocean thermal energy conversion, deepwater ports and marine pollution. The precise division between Presidential and Congressional authority may be difficult to identify with certainty, but this much is clear:

- 1) By Proclamation the President could control resource related activities by a foreign flag vessel beyond the continental shelf but within 200 nautical miles of the coast.
- 2) By Proclamation the President could assert jurisdiction in general terms, leaving for Congress the identification of its specific content.
- 3) By Proclamation the President could not regulate the activities of US nationals in these areas where there was not otherwise a statutory basis.

Therefore, any decision to proclaim an EEZ should be accompanied by a decision to begin the process of implementing legislation. This would be achieved either by drafting an Administration Bill or working closely with the Members of Congress and Senators who have already introduced EEZ Bills to perfect that legislation. We would then have to promulgate regulations to implement the new law. We will have to examine very carefully existing statutes to determine what modification

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are necessary or desirable as a result of the US establishing an EEZ, including tax consequences which may be substantial.

ELEMENTS OF THE EXCLUSIVE ECONOMIC ZONE

1. Fisheries

A US EEZ would not change existing US control over fisheries within 200 nautical miles of the coast. The present US law on tuna within the 200 mile zone varies from the UNCLOS III Convention as interpreted by a majority of States, in that the US neither recognizes nor asserts jurisdiction over tuna. Any change in our tuna policy would be politically controversial and would severely damage our distant-water tuna industry. The establishment of an EEZ would not affect the scope of our laws, but would give us a stronger hand in fishery negotiations with other States by establishing US sovereign rights in these resources.

2. Continental Shelf

A US EEZ would incorporate existing US jurisdiction over the continental shelf. No changes in that jurisdiction are contemplated. The only question is the geographical outer limit. The exploitability test, set out in the 1958 Geneva Convention on the Continental Shelf to which the US is a party, is ambiguous. It would be possible at this time--but is not necessary--to define specifically the outer limits of the US continental shelf in those areas where it may extend beyond 200 nautical miles.

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The Minerals Management Service, Department of the Interior, published notice of jurisdiction over the Juan de Fuca Ridge, and the Gorda Ridge, of the west coast of the United States, on 8 December 1982 in the Federal Register, based on the exploitability test of the 1958 Geneva Convention on the Continental Shelf, the Truman Proclamation of 1945, and domestic Outer Continental Shelf and deep seabed mining legislation. This assertion of United States jurisdiction is under active discussion within the interested agencies of the government, some of whom consider it without merit. Insofar as the Gorda Ridge, which lies within 200 nautical miles of the US, is concerned, the EEZ Proclamation would obviate any actual or potential problems arising from the assertion of jurisdiction. The question of the inclusion of the Juan de Fuca Ridge, most of which lies beyond 200 miles, within the limits of the continental shelf of the United States must, however, await resolution of questions regarding the exact definition of the limit of the continental shelf beyond 200 miles, noted above. DOI will place a notice in the Federal Register clarifying the jurisdiction claim at the time the EEZ proclamation is made public.

3. Other Mining Activities

The greatest resource benefit in the claim of an EEZ would be that the United States would gain jurisdiction over

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the resources of the seabed beyond the continental shelf but within 200 nautical miles of the coast. Recently discovered deposits of polymetallic sulphides and cobalt/manganese crusts are not currently commercially recoverable, but could be a major source of industrially important strategic minerals in the future. The EEZ will assert jurisdiction over all minerals (nodules, sulfide deposits, hydrocarbons, etc.) in these areas. To protect these minerals from exploitation by other States (which is unlikely in any event) the Proclamation would permit the US to control foreign resource-related activities in these areas. The Deep Seabed Hard Mineral Resources Act already governs US citizens mining nodules in these areas as an exercise of a high seas freedom. Additional legislation should be sought to establish exclusive rights to particular mine sites; and to establish US regulatory authority over minerals other than nodules.

4. Marine Scientific Research

The SIG recommends that the US assert no new control over marine scientific research. The US will continue to exercise existing jurisdiction over resource related research on the continental shelf and within the fisheries zone. However, as a legal matter, if the US adopts the concept of an EEZ, it must accept that the coastal State has jurisdiction over marine scientific research in the EEZ (understanding that

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military activities are not within the definition of marine scientific research). It is important to clarify the distinction between marine scientific research, which is subject to coastal State controls, and research related to other uses of the high seas and embodied in the concept of freedom of navigation and overflight, which is not subject to coastal State controls. This distinction is essential to preserve our right to conduct military related research off the coasts of other States.

The US scientific community has indicated that it is reluctantly willing to accede to expanded coastal state jurisdiction over marine scientific research in the EEZ if the US will seek clearances from coastal States for such research. The SIG recommends that the Department of State submit vessel clearance requests from US marine scientists seeking to conduct marine scientific research programs in foreign EEZ's:

5. Marine Pollution

The Clean Water Act, and other laws, provide for certain pollution jurisdiction off the US coast at the present time. Without going into detail, it may be said that the UNCLOS III Convention provides a complex formula for an exercise of significantly more coastal State jurisdiction, but this is subject to dispute settlement procedures established under

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the Convention. Our present jurisdiction is probably sufficient to meet our own coastal needs for the foreseeable future. However, in light of the interest of other States in asserting new pollution control jurisdiction that could seriously affect and have a negative influence on continued freedom of navigation and overflight in the EEZ, we may wish to consider establishing a pollution jurisdiction that implements the meaning of the UNCLOS III Convention in this area. There are essentially three aspects of this matter. Under the UNCLOS III Convention, the coastal State has jurisdiction over the dumping of wastes (as defined) within the EEZ. By asserting an EEZ, we would be recognizing the rights of others to control this activity. The Marine Protection Research and Sanctuaries Act would require amendment to bring foreign dumping in a US EEZ under US regulatory authority beyond the territorial sea and contiguous zone.

The second aspect of this matter is the port State's authority to take actions in port against foreign flag vessels that have violated pollution regulations applicable to the EEZ. The US has an interest in maintaining that such regulations may only implement generally agreed international standards and that the coastal State has no authority to adopt its own ad hoc standards. Our commercial shipping interests would also benefit from a precedent created for

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prompt resolution of any legal proceedings brought by the port State. The entry into force of the MARPOL Protocol in September 1983 will, in large measure, together with other US laws, enable the United States to structure a responsible pollution regime for the EEZ that can guide other States as they deal with this complicated question. At this time, it would be appropriate to indicate our general intentions and to require further study of this question.

The third aspect of this matter is the enforcement jurisdiction that the coastal State may exercise against foreign flag vessels passing through the EEZ, but not entering a port. In other words, to what extent and in conformity with what pollution criteria may a coastal State enforcement authority stop, board, inspect, and take control of a foreign flag vessel passing through the EEZ. Because of our navigation interests the US objective is to see a very restricted State practice develop in this area. At this time, it would be appropriate to indicate the US view that such coastal State authority is extremely limited and goes no further than the jurisdiction we presently have to intervene in the case of marine disasters. This view need not be discussed at the present time in either the Proclamation or the Policy Statement.

A marine pollution policy along these lines would be seen as responsive to the development of international law;

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be a contribution to the international community in developing a rational legal proposal in this area; and would be protective of US resources and the coastal environment. In structuring a marine pollution policy we would have the opportunity to reaffirm our view that pollution jurisdiction is not applicable to ships and aircraft entitled to sovereign immunity.

6. Other Jurisdiction

An EEZ provides for the coastal State control of new technologies designed to harness energy from the sea. It would be appropriate to claim this jurisdiction by Proclamation, but to leave its details to legislation. Present OTEC legislation would need to be amended.

7. Navigation and Overflight

In claiming an EEZ, the character of the zone as being beyond national territory, and the freedoms enjoyed by foreign vessels and aircraft, should be acknowledged. We have an interest in asserting leadership in this area (protecting rights off foreign coasts by acknowledging their existence off our coasts), but at the same time we have an interest in not creating such a strong record that it causes an exaggerated reaction, creating a contrary record in the end. We should indicate that the EEZ is an area beyond the territory of the coastal State.

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There are two issues concerning resource zones of particular interest to the Department of Defense: (1) the scope and nature of high seas freedoms retained by the international community and (2) whether it is to be regarded as a zone in which residual rights reside in the international community or in the coastal State.

The importance to the United States in ensuring the retention of the broadest scope and nature of traditional high seas freedoms in resource zones extending out to 200 miles from foreign coasts is obvious. As to the second issue, whether or not the zone is regarded as national territory is equally important. It is a key in the determination of whether residual rights reside with the international community or coastal state. Coastal state arguments claiming control over foreign warships and aircraft would be much greater if the zone were viewed as national in character, albeit *sui generis*. Therefore, the US should protest all claims that purport to assert "national zones" under the rubric of an EEZ that do not protect our high seas rights in the zone, or which attempt to apply nonresource-related jurisdiction in the zone.

For practical purposes, the US assertion that the zone is not national territory will help make it clear that the zone is not one wherein the residual rights are nationalized.

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Such a US zone should not result in an exaggerated reaction by others.

8. Marine Mammals

Under the Marine Mammal Protection Act, the US already has jurisdiction over marine mammals within 200 miles of the US coast. The US has chosen, as a matter of policy which is stated in the Marine Mammal Protection Act, to exercise this jurisdiction in the case of fur seals and directed take of cetaceans by deferring to management by international organizations. The EEZ would not affect marine mammal management nor US policy of deferring to international organizations in these two situations.

9. Boundaries

It is appropriate in the Proclamation on this subject to mention the opposite and adjacent international maritime boundary delimitation issues that the US has with its neighbors. In doing so we could reaffirm that they should be established by agreement in accordance with equitable principles, and could note their interrelation with continental shelf and fisheries zone boundaries.

10. Artificial Islands, Installations and Structures

The UNCLOS III Convention is somewhat ambiguous in its recognition of coastal State jurisdiction in this area. The US has an opportunity to assert jurisdiction in a manner

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compatible with our interpretation of the LOS text, i.e., jurisdiction over all artificial islands, over installations and structures having economic purposes only, but not over installations and structures having non-economic purposes. Setting this standard would be of importance to our non-navigational, military uses of foreign EEZs. The US OCSLA and Deepwater Ports Act do pertain and would require some modification. Furthermore, in this regard, a number of legal considerations concerning taxable activities, immigration, and criminal and civil jurisdiction for the purpose of numerous US statutes will arise in the consideration of legislative initiatives.

RECOMMENDATION:

That the proposed proclamation and Presidential Statement on Oceans Policy be issued as soon as practicable following appropriate consultations with our allies and neighboring States. All concerned agencies concur.

Approve _____ Disapprove _____

That the Administration begin to work with Congress on legislation necessary to implement the Exclusive Economic Zone and oceans policy within the guidance established by these documents. All concerned agencies concur.

Approve _____ Disapprove _____

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DRAFT PRESIDENTIAL OCEANS POLICY STATEMENT

The United States has long been a leader in developing customary and conventional law of the sea to provide a legal order that will, among other things, facilitate international communication and resolution of differences, promote peaceful uses, and provide for equitable and effective management and conservation of marine resources. The United States has also recognized that all nations, to varying degrees, have an interest in these oceans issues.

Last July I announced that the United States will not sign the United Nations Law of the Sea Convention that was opened for signature on December 10. We have taken that step because several major problems in the Convention's deep seabed mining provisions are contrary to the interests and principles of industrialized nations and would establish a system that would increase -- rather than decrease -- tensions and difficulties in North/South relations.

The United States does not stand alone in those concerns. Some important allies and friends have not signed the Convention for similar reasons. Even some States that have signed have also raised serious concerns about these problems.

The Convention also reflects many positive achievements, particularly in the consensus achieved with respect to traditional uses of the oceans. This consensus accommodates the interests of all States in a fair and balanced manner.

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DECL: OADR

Today I am announcing three policy directions to promote and protect United States oceans interests. These policies are consistent with the consensus that was achieved in the Law of the Sea Conference.

First, the United States is prepared to accept and act in accordance with the consensus achieved in the Convention with respect to those elements that relate to traditional uses -- such as navigation and overflight. In this respect, the United States will recognize the rights of other States in the maritime areas off their coasts, as reflected in the Convention, so long as the internationally recognized rights and freedoms of the United States and others reflected in that Convention are recognized by such coastal States.

Second, the United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the consensus reached in the Convention. The United States will not acquiesce in unilateral acts of other States designed to restrict the rights and freedoms of the international community in navigation and overflight and other related uses of the high seas.

Third, I have proclaimed today an Exclusive Economic Zone in which the United States has sovereign rights in living and non-living resources, with the exception of highly

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migratory species of tuna, within 200 nautical miles of its coast. Within this zone all nations will continue to enjoy the high seas rights and freedoms that are not resource related, including the freedoms of navigation and overflight. This act will not materially change existing United States rights over fisheries, marine mammals and the continental shelf. It will, however, establish jurisdiction over resource-related activities on the deep seabed beyond our continental shelf but within 200 nautical miles of our coast. The US will continue its policy of promoting the rapid and full development of the US fishing industry.

Although international law provides us with the right to exercise jurisdiction over marine scientific research in our EEZ, the United States has elected not to do so because we wish to encourage marine scientific research and impose no unnecessary burdens. Nevertheless, we shall recognize the right of other coastal States to exercise jurisdiction over marine scientific research within 200 nautical miles of their coasts, if that jurisdiction is exercised reasonably in a manner consistent with international law.

An Exclusive Economic Zone will also enable the United States to take additional steps to protect the marine environment. In this connection, we will continue to work through the International Maritime Organization and other appropriate

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international organizations to develop uniform international measures for the protection of the marine environment while imposing no unreasonable burdens on commercial shipping.

In addition to the above policy steps, the United States will continue to work with other countries to develop a regime, free of unnecessary political and economic restraints, for mining deep seabed minerals beyond national jurisdiction. The United States will continue to allow its firms to explore for and, when the market permits, exploit these resources and remains committed to the principle that deep seabed mining is a lawful exercise of the freedom of the high seas open to all nations.

The Administration looks forward to working with Congress on any legislation necessary to implement these new policies.

In exercising our rights, freedoms and responsibilities, the United States shall strive to ensure that all ocean uses are conducted in a peaceful and harmonious manner contributing to the welfare of all nations.

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By the President of the United States of America
A PROCLAMATION

Whereas the Government of the United States of America desires to facilitate the wise development and use of the oceans consistent with international law; and

Whereas international law recognizes that, in a zone beyond its territory and adjacent to a territorial sea known as the Exclusive Economic Zone, a coastal State may claim certain sovereign rights over natural resources and related jurisdiction; and

Whereas the establishment of an Exclusive Economic Zone by the United States will advance the development of energy and natural resources, promote the protection of the ocean environment, while not affecting other lawful uses of the zone, including the freedom of navigation and overflight, by other States;

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the sovereign rights and jurisdiction of the United States of America and confirm also the rights and freedoms of all States within an Exclusive Economic Zone, as described herein.

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The Exclusive Economic Zone of the United States is a zone contiguous to its territorial sea, including zones contiguous to the territorial seas of the United States, its overseas possessions and the Commonwealth of Puerto Rico, and extends to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. In cases where the maritime boundary with a neighboring State remains to be determined, the boundary of the Exclusive Economic Zone shall be determined by the United States and the other State concerned in accordance with equitable principles.

Within the Exclusive Economic Zone, the United States has (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, both living, with the exception of highly migratory species of tuna, and non-living, of the seabed and subsoil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; and, (b) jurisdiction with regard to the establishment and use of artificial islands, and installations and structures having economic purposes; and the protection and preservation of the marine environment.

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The United States will exercise these sovereign rights and jurisdiction in accordance with the rules of international law.

Without prejudice to the sovereign rights and jurisdiction of the United States, the Exclusive Economic Zone remains an area beyond the territory of the United States in which all States enjoy the high seas freedoms of navigation, overflight, the laying of submarine cables and pipelines, and other internationally lawful uses of the sea.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Ronald Reagan

Done at the City of Washington this _____ day of _____, in the year of our Lord nineteen hundred eighty-three.

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